

CITY of BURIEN
Department of Community Development
Interpretation # 99-04

Subject: Processing of SEPA Threshold Determinations of Non-Significance for Type 4 Legislative Reviews

Discussion:

On June 7, 1999, the City Council passed Ordinance 252 which adopted Phase 1 of the new Zoning Code (BMC Title 19). BMC 19.65.020.2 states that all SEPA threshold determinations shall be processed as a Type 1 review. Other sections of BMC 19.65 provide instructions for processing of Type 1 reviews, including notice and appeal procedures.

Required components of a Type 1 land use review include issuance of a determination of complete application, notice of application and notice of decision. These components all emanate from RCW36.70B, which provides regulations and procedures for processing of "project permits". The RCW definition of a "project permit" specifically excludes adoption or amendment of comprehensive plans, subarea plans or development regulations [RCW 36.70B.020(4)]. Therefore, under State law, a determination of complete application, notice of application and notice of decision are not required for adoption or amendment of comprehensive plans, subarea plans or development regulations.

Since the notice of application procedure does not apply, BMC 19.65 is silent on the issue of public notice and comment periods for a SEPA DNS. Therefore, the City must rely on State law for notice requirements. WAC 197-11 contains the SEPA rules.

A Type 4 legislative decision is a "GMA action" under WAC 197-11-220(4). According to WAC 197-11-340(2)(a)(v), a DNS on a GMA action requires a 14-day comment period prior to the City acting on the Type 4 review. WAC 197-11-340(2)(b) requires that public notice of the DNS be given to agencies with jurisdiction, local agencies whose services may be affected, Dept. of Ecology and affected tribes; and, references WAC 197-11-510, which directs the lead agency to adopt notice procedures as part of its local SEPA regulations. Burien has adopted King County's SEPA regulations (KCC 20.44). KCC 20.44.060.B requires publication of the DNS in a newspaper of general circulation. Therefore, the DNS should be published in the City's official newspaper.

Conclusions:

It is my interpretation that SEPA threshold determinations relating to adoption or amendment of comprehensive plans, subarea plans or development regulations:

- 1) Do not require issuance of a determination of complete application, notice of application and notice of decision.
- 2) Require a 14-day comment period prior to Council action on the proposal.
- 3) Shall be published in the City's official newspaper and mailed to agencies with jurisdiction, local agencies whose services may be affected, Dept. of Ecology and affected tribes.

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Community Development Director

Sept. 10, 1999
Date